IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajendra Kumar Bhoi. Versus Rajasthan State Road Transport Corporation & ors.

S.B. Civil Writ Petition No. 123/2007

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Date of Order: May 01, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Shambhoo Singh, for the petitioner.
Mr. P.K. Lohra, for the respondents.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the order Annx.8 dated 22-12-2006 transferring the petitioner from Udaipur Depot to Abu Road Depot of the respondent Rajasthan State Road Transport Corporation (for short, "the RSRTC" hereinafter).

Heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that on account of the transfer by the impugned order Annx.8, the petitioner, who is Employees Union Leader, he would lose his position as the Employees Union Leader. Learned counsel submits that rule 61 of the Industrial Disputes Rules,

1948 protects the transfer of such employees. Lastly, it was contended that the petitioner filed certain complaints against the higher officers and the impugned transfer order is an out-come of those complaints. Learned counsel has relied on the decision of the Hon'ble Supreme Court in Lokmat Newspapers Pvt. Ltd. Vs. Shankar Prasad, (1999) 6 SCC 275.

Learned counsel for the respondents, on the other hand, submits that the transfer is an exigency of service; petitioner had been working in the Udaipur Depot since 2000; transferring the petitioner from Udaipur Depot to Abu Road Depot is in the administrative exigency and public interest. Learned counsel for the respondents has relied on a Constitution Bench decision of the Hon'ble Supreme Court in E.P. Royappa Vs. State of Tamil Nadu & Anr., (1974) 4 SCC 3.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was initially appointed as a Driver with the respondent RSRTC on 27-1-1987. He has served the respondents at various places including Udaipur Depot, Abu Road Depot etc. By the impugned order Annx.8 dated 22.12.2006, the petitioner and nine other persons have been transferred to various Depots of the respondent RSRTC. The petitioner has been transferred from Udaipur Depot to Abu Road

Depot. He is President of Rajasthan State Road Transport Corporation Joint-Employees Federation. The petitioner address a communication Annx.4 to the General Manager (Vigilance & Security) of the respondent RSRTC pointing out certain instances of corruption and exploitation in the Workshop of Udaipur Depot. The petitioner seeks quashing of the impugned transfer order Annx.8 on the grounds, firstly that he is the President of the Employees Federation and secondly that the impugned transfer order is an out-come of the complaints against some of the employees of the respondents; however, he has not levelled any specific allegation of malafide against any person, nor impleaded such persons against whom the allegations have been made.

A reply to the writ petition, raising certain preliminary objections, has been filed by the respondents denying the grounds raised in the writ petition. It has been stated in the reply to the writ petition that transfer is an exigency of service and in public interest; a person holding a transferable post has no vested right to remain posted at a particular place of his choice and it is solely prerogative and repository of the employer to transfer an employee in administrative exigency and public interest; the allegations of malafide made by the petitioner are wholly unfounded and baseless; in the year 2000, his transfer from Udaipur Depot to Jodhpur Depot was cancelled on his request; his union activities

were not the reason of his transfer but his transfer was on account of administrative exigency and public interest; he is having very longer period of stay at Udaipur Depot and as such he cannot claim any right as a vested right to remain posted at a particular place of his choice etc. etc.

The Court can interfere with the impugned transfer order only if the transfer order is in contravention of the statutory provisions or had been passed on malafide reasons. The issue of transfer and posting has been considered time and again by the Apex Court and entire law has been settled by catena of decisions holding that it is entirely upto the competent authority to decide when, where and at what point of time a public servant is to be transferred form his present posting.

An employee holding a transferable post cannot claim any vested right to work on a particular place as the transfer order does not affect any of his legal rights and Court cannot interfere with a transfer order/posting which is made in public interest or on administrative exigency. In Gujarat Electricity Board Vs. Atmaram Sungomal Poshani, AIR 1989 1433, the Hon'ble Supreme Court has observed as under:-

> "Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place.

> Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration."

Thus, it is clear that courts can interfere with the transfer order only on the grounds of malafide or if the transfer order is found to be in violation of the statutory Rules. None of such ground exists in this case. Moreso, if the allegations of malafide are to be alleged, it become the duty of the employee to implead the person(s) against whom the allegations are made.

In Shilpi Bose Vs. State of Bihar, AIR 1991 SC 532, the Apex Court has held that order of transfer/posting "issued by the competent authority did not violate any of her legal rights." The employee holding a transferable post cannot claim any vested right for his/her posting at a particular place.

In State of Madhya Pradesh Vs. S.S. Kourav, AIR 1995 SC 1056, it has been held by the Apex Court that it is not permissible for the writ court or Tribunal to go into the relative hardship of an employee which may be caused by his transfer/posting. It is for the competent authority/employer to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration. If the employees makes a representation before the Competent

Authority against the impugned transfer order ventilating all his grievances, the employer is under a solemn duty to consider his representation and the said Authority cannot brush-aside the grievances of the employee being personal in nature. Therefore, it is for the employer and not for the court to consider the grievances of the employee, if the same are personal in nature.

In N.K. Singh Vs. Union of India & ors., (1994) 6 SCC 98, while explaining the scope of judicial review in transfer matters, the Apex Court observed that interference is justified only in cases of malafides or infraction of any professed norm or principle and further observed that where career prospects remain unaffected and no detriment is caused, challenge to the transfer order must be eschewed. The Apex Court further observed that transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post.

Thus, from the aforesaid settled legal proposition, the courts can interfere in transfer matters only and only if the same are out-come of malafide exercise of power, politically motivated or contrary to the provisions of law.

In the instant case, though the petitioner has alleged malafide against the respondents in passing frequent transfer orders, including the impugned order, but neither he could substantiate such malafide nor has he impleaded such person by

name as a party-respondent. In this view of the matter, the decisions relied on by the learned counsel for the petitioner are not applicable to the instant matter.

In the result, the writ petition lacks merit and it is dismissed accordingly. Ad interim order dated 9-1-2007 stands vacated and the application under Article 226 (3) of the Constitution of India, being IA No.1125/2007 stands disposed of. There shall be no order as to costs.

(H.R. PANWAR), J.

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